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Google

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
<input type="text"/>	Sharon Levy
COMPANY:	DATE:
	August 4, 2004
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
<input type="text"/>	7
PHONE NUMBER:	SENDER'S DIRECT NUMBER:
	<input type="text"/>
RE:	FAX NUMBER:
<input type="text"/>	<input type="text"/>
URGENT	<input type="checkbox"/> FOR REVIEW <input type="checkbox"/> PLEASE COMMENT <input type="checkbox"/> PLEASE REPLY <input type="checkbox"/> PLEASE RECYCLE

NOTES/COMMENTS:



Thanks very much for your call earlier today. As I promised, I've attached a revised Google License Agreement for the Search Appliance as well as our remaining comments on the forms you'd faxed to Jon Venverloh earlier.

Please review the attached and I will look forward to our call to touch base on Monday, August 9th.

Regards,

Sharon Levy

Cc: Jon Venverloh, via email

Google License Agreement

Recitals – your changes were made as requested. Also I've added a date to this Agreement so that we may better be able to reference it in the final contract and in any future correspondence.

Section 2 – Your changes were made as requested.

Section 3 – Your comments are noted.

Section 5 – On the first sentence, I've changed the Term start from *shipment* to *delivery*, rather than installation as you'd suggested since your offices will largely be responsible for the installation (with Google's assistance) and for the configuration of your network.

On the second paragraph suggestion, we have the following concerns about removing the paragraph in order to add in the suggested FAR sections: (1) Google's inability to terminate for the Government's breach is now removed, but needs to be retained; and (2) the inclusion of 52.212-4(l) gives rise to a financial concern as it could be read as requiring a refund of fees already paid for equipment delivered (especially as Section 2 now specifies that you will not be returning the equipment to Google upon termination.). We may be able to include this reference if we also state that no right of refund is required pursuant to 52.212-4(l).

Section 6 – Your changes were made as requested.

Section 7 – As we discussed, we believe if we rely on the order of precedence in 52.212-4(s), there should be no need to make this change.

Section 8 – As with Section 7 above, we believe that we can leave this provision as written.

Section 9 – Your changes were made as requested.

Section 11 – If the order of precedence doesn't cover this already, aren't we already subject to applicable US law per your changes to Section 9? Further if the provision is deemed unenforceable, then Section 9 also contains: "*If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and remain enforceable between the parties.*"

Google Technical Support Services Guidelines

We have no objections to your suggested revisions. A modified document will be sent on Monday.

Section II – Addendum and Contract Clauses

General Comment - Can I expect that we will reference the License Terms and Technical Support Services Guidelines here?

Items checked under 52.212-5 (your pages 8-12) –

52.219-8, Utilization of Small Business Concerns – We believe that this provision is in applicable to the delivery of commercial products. Please remove.

52.225-1, Buy American Act – Note only: We believe we comply, but need to verify that we are determining this appropriately (I'll hopefully confirm this for you on Monday).

52.212-5(d), Comptroller General Examination of Record – As I mentioned on the phone, I don't believe that this clause applies to the sale of commercial products and would like to see this removed from the Addendum.

THE DOCUMENT COMPANY

XEROX.

51955 (1/2002)

LICENSE AGREEMENT
Google Search Appliance™
August 4, 2004

This License Agreement for the Google Search Appliance (the "Agreement") is made and entered into by and between Google Inc. ("Google") and the Agency as identified in Block 9 of the Contract Cover Page SF1449 ("Customer"). Customer may also be referred to herein as "You" or "Your". This Agreement and the corresponding Contract No. _____ ("Order Form") set forth the terms and conditions under which You may license and use such Products. Contract No. _____ shall incorporate this Agreement by reference.

1. LICENSE GRANT. Subject to the terms and conditions of this Agreement and the Order Form, and in consideration of Your payment of all applicable fees and taxes as set forth in the Order Form ("Fees"), Google grants to You (and You agree to comply with) a non-sublicensable, non-transferable, non-exclusive, limited license to use for the Term (as applicable and provided herein): (i) certain Google proprietary computer software identified in the Order Form in binary executable form only (the "Software"), that is installed in certain Google proprietary computer hardware (the "Hardware") and (ii) certain Google proprietary documentation in the form generally made available by Google to its customers for use with the Products (the "Documentation"). The Software and Hardware are collectively referred to herein as the "Appliance". The Appliance and Documentation are collectively referred to herein as the "Product". A license key that enables the Software may be required and forwarded to You electronically. Your use of the Products shall be restricted to creating an index of and searching for content located solely on servers that are owned and operated by You. The right to search and access content made available by the Products on such servers are also hereby licensed to Your authorized end-users. You agree to be responsible for the acts and/or omissions of any such end users in breach of the terms set forth herein. The license grant set forth herein is further limited to indexing the number of Documents and Collections as defined and further specified on the Order Form.

Any third party component embedded, included or otherwise provided for use with the Products may only be used in conjunction with such Products ordered under the Order Form, and such use shall be subject to all the terms and conditions of this Agreement. The Products are designed for use with the equipment and accessories specified in the Documentation. Google assumes no responsibility under this Agreement for obtaining or providing such equipment. Customer is also responsible for ensuring a proper environment and proper utilities for the computer system on which the Products will operate.

2. OWNERSHIP; RESTRICTED USE. For purposes of this Agreement, "Intellectual Property Rights" means any and all rights existing from time to time under patent law, copyright law, semiconductor chip protection law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law, and any and all other proprietary rights, and any and all applications, renewals, extensions and restorations thereof, now or hereafter in force and effect worldwide. All ownership rights, title, and Intellectual Property Rights in and to the Products shall remain in Google and/or its licensors, except that title to the Hardware shall pass to You upon receipt of all Fees by Google ("Limited Title"). All ownership rights, title, and Intellectual Property Rights in and to the content accessed through the Appliance is the property of the applicable content owner and may be protected by copyright and/or other applicable laws.

You agree not to, or to allow others to: (i) adapt, alter, modify, decompile, translate, disassemble, or reverse engineer the Product or any component thereof, including without limitation, the source code and any other underlying ideas or algorithms of the Software (except to the extent applicable laws specifically prohibit such restriction); (ii) alter the number of Documents and/or Collections authorized for Your use; (iii) create license keys that enable the Software; (iv) copy the Software except as provided in Section 4 (Technical Support Services); (v) use the Product for High Risk Activities as defined below; (vi) transfer, sublicense, loan, sell, lease or use for timesharing or service bureau purposes the Product or any component thereof; or (vii) ship, divert, tranship, transfer, export or re-export the Products or any component thereof into any country or use it in any manner prohibited by any export control laws, restrictions, or regulations administered by the U.S. Commerce Department's Bureau of Export Administration, the U.S. Department of Treasury's Office of Foreign Assets Control or any other applicable government agency. For the avoidance of doubt, nothing in this Agreement grants to You any rights whatsoever in or relating to the source code of the Software.

Any trade names, trademarks, service marks, logos, trade dress, and any other distinctive or proprietary symbols, labels, designs or designations ("Brand Features") as well as any copyright or other proprietary notices appearing on or in the Product shall be maintained and shall not be removed, modified or altered by You. At Your option, the search box (or other means used by an end user to enter a search query) and/or results pages may conspicuously display an unaltered graphic in the form provided by Google for the purpose of identifying that the search function is provided by Google and may link to the Google site located at: www.google.com (or such other URL as may be updated by Google). Such graphic may be accessed at: www.google.com/stickers.html (or such other URL as may be updated by Google) and all use of such graphic shall be subject to Google's then current Brand Feature guidelines and policies in effect.

Neither party shall use any Brand Features of the other party in any news release, public announcement, advertisement, or other form of publicity without securing the prior written consent of the other party. All use by Google of Customer's Brand Features (including any goodwill associated therewith) shall inure to the benefit of Customer and all use by Customer of Google's Brand Features (including any goodwill associated therewith) shall inure to the benefit of Google. Each party agrees

not to challenge or assist others to challenge the other party's Brand Features or registration thereof (except to protect such party's rights with respect to its own Brand Features) nor shall either party attempt to register any Brand Features or domain names that are confusingly similar to those of the other party. Except as provided for pursuant to this Agreement, neither party shall acquire any right, title or interest in or to the other party's Brand Features.

3. DELIVERY. The Products shall be delivered by the shipping method indicated on the Order Form. Unless otherwise specified in an applicable Order Form, all subsequent supplemental increases or modifications to Your order hereunder shall be deemed to be delivered under the same terms as the original license. You agree that at the time of Your receipt of any Product, You shall bear all risk of loss, theft or damage of any kind to such Product and that your failure to obtain insurance at the time of Your receipt of such Product will be at Your own risk without liability of any kind to Google.

4. TECHNICAL SUPPORT SERVICES. In consideration of Your payment to Google of all Fees, Google shall provide technical support services in accordance with Google's then current Technical Support Services Guidelines ("TSS Guidelines") for the Products identified in the Order Form during the period and at the level set forth therein ("Technical Support Services" or "TSS"). TSS Guidelines are password protected and may be accessed at the following URL: <http://support.google.com> (or such other URL as may be updated by Google). TSS Includes Updates as defined under the TSS Guidelines and shall be made available to You provided You are current on Technical Support Services. Your use of any Updates shall be subject to the same terms applicable to the Product as set forth under this Agreement and the Order Form. You agree that such Updates shall be installed as required by the terms of the applicable TSS Guidelines. Furthermore, You may make a copy of an Update to a physical medium solely for the purpose of facilitating the installation of such Update onto the Appliance, and You agree to immediately erase or destroy such copy once the applicable Update is installed on the Appliance. TSS also includes repair or replacement of Hardware that is defective or damaged (beyond normal wear and tear during shipment) at the time of Your receipt (as determined in Google's sole discretion), provided (i) You promptly comply with all procedures stated in the applicable TSS Guidelines, and (ii) such defect or damage to the Hardware was not caused by Your abuse, misuse, accident, alteration, or unauthorized modification or installation. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE FOREGOING SHALL BE GOOGLE'S ENTIRE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE OR DAMAGED HARDWARE. Unless otherwise agreed in writing, in order to receive TSS You agree to provide Google with full and timely access to the Appliance as provided in the applicable TSS Guidelines. Failure to provide such access will be at Your own risk and without liability to Google.

5. TERM AND TERMINATION. Subject to Your payment of all Fees, the term of the license granted herein for any Product shall be for the period of two (2) years commencing from the delivery date of the Product (the "Term"), unless earlier terminated as set forth herein.

A party may, by written notice of default to the other party, (i) terminate this Agreement, in whole or in part, (a) if the other party materially breaches this Agreement and/or the Order Form, and the breaching party does not cure such material breach within thirty (30) calendar days after receipt of written notice of such breach; or (b) immediately following the failure to resolve the suspension of business, insolvency, institution of bankruptcy, liquidation proceedings by or against the other party, appointment of a trustee or receiver for either party's property or business, or any assignment, reorganization or arrangement by either party for the benefit of its creditors. Google may immediately terminate this Agreement, in whole or in part, if You are in breach of Section 2 (Ownership, Restricted Use) or Section 6 (Confidential Information); or (ii) You are in material breach of this Agreement and/or the Order Form more than twice notwithstanding any cure of such breaches.

Upon expiration or termination of this Agreement, all licenses, and any other rights and services provided by Google to You as set forth in this Agreement, shall cease immediately. If this Agreement is terminated for Your breach, You must immediately return the Product to Google via Google's authorized return shipment process for receipt by Google, at which time Your Limited Title in the Hardware shall revert to Google. Except as set forth herein, upon expiration or termination of this Agreement, You may keep possession of the Hardware, provided that all Software is erased in compliance with the process as instructed by Google, and You will provide written certification that You have properly completed such process within ten (10) business days of such expiration or termination.

Termination of this Agreement, Order Form or any license shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve You of Your obligation to pay all fees that have accrued or are otherwise owed by You.

6. CONFIDENTIAL INFORMATION. A party (the "Discloser") may disclose to the other party (the "Recipient") information that the Discloser considers to be confidential and at the time of disclosure is clearly identified as confidential and/or proprietary ("Confidential Information"). Notwithstanding the foregoing, Confidential Information shall be deemed to include the Product in any embodiment, the terms and conditions of this Agreement (including pricing), and Google's technical and business information relating to research and development, future product specifications, engineering processes and methodologies, costs, and marketing and future business plans. You acknowledge that the source and object code of the Software remains a confidential trade secret of Google and/or its licensors and that You are not entitled to review either the object code or the source code of the Software for any reason at any time. Recipient shall not disclose or cause to be disclosed any Confidential Information of Discloser, except (i) to those employees on a need-to-know basis; (ii) to agents, advisors, representatives, or contractors of the parties who require access to the Confidential Information to perform under this Agreement or to advise Recipient in connection therewith, and who are bound by written agreement not to disclose third-party confidential or proprietary information disclosed to Recipient (such employees referred to in subsection (i) above and third parties referred to in this subsection shall collectively be referred to as "Authorized Personnel"); or, (iii) as needed to

comply with a court order, subpoena, or other government demand (provided that Recipient first notifies Discloser and gives Discloser the opportunity to challenge such court order, subpoena, or government demand). Furthermore, Recipient agrees to be responsible for any act and/or omission of any Authorized Personnel in breach of this Section. Recipient shall protect the Confidential Information of Discloser by using the same degree of care, but no less than a reasonable degree of care, that it uses to protect its own confidential information of a like nature to prevent its unauthorized use, dissemination or publication to any unauthorized third parties. A party's Confidential Information shall not include information that: (a) is or becomes publicly available through no act or omission of Recipient; (b) was in the Recipient's lawful possession prior to the disclosure and was not obtained by Recipient either directly or indirectly from the Discloser; (c) is lawfully disclosed to the Recipient by a third party without restriction on Recipient's disclosure, and where Recipient was not aware that the information was the confidential information of Discloser; or (d) is independently developed by the Recipient without violation of this Agreement. Results, analyses or other information generated in benchmarking and/or performance testing of the Product shall be confidential. Each party acknowledges that damages for improper disclosure of Confidential Information may be inadequate; therefore, the injured party is entitled to seek equitable relief, including temporary restraining order(s) or preliminary or permanent injunction, in addition to all other remedies, for any violation or threatened violation of this Section 6 or Section 2. In the event that Your Confidential Information is left, whether inadvertently or intentionally, in any Appliance that is returned for reasons other than defect or damage as provided for under this Agreement, Google shall have no liability whatsoever under this Section for such Confidential Information. If the Appliance is returned due to damage or defect, You will use commercially reasonable efforts to remove such Confidential Information.

7. WARRANTY DISCLAIMER. GOOGLE AND ITS LICENSORS MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NON-INFRINGEMENT. THE PRODUCT AND SERVICES ARE PROVIDED BY GOOGLE AND ITS LICENSORS "AS IS". GOOGLE AND ITS LICENSORS DO NOT WARRANT THAT THE PRODUCT OR ANY PORTION THEREOF, ARE ERROR OR BUG FREE, OR THAT YOUR USE OF THE PRODUCT OR SERVICES WILL BE UNINTERRUPTED. GOOGLE AND ITS LICENSORS ASSUME NO RESPONSIBILITY FOR THE PROPER INSTALLATION AND USE OF THE PRODUCT. GOOGLE AND ITS LICENSORS MAKE NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY THE PRODUCT. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, TO THE EXTENT PERMISSIBLE, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF SHIPMENT OF THE APPLICABLE PRODUCT. THE PRODUCT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USES SUCH AS THE OPERATION OF NUCLEAR FACILITIES, AIR TRAFFIC CONTROL OR LIFE SUPPORT SYSTEMS, WHERE THE FAILURE OF THE PRODUCT COULD LEAD TO DEATH, PERSONAL INJURY, OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES").

8. LIMITATION OF LIABILITY. IN NO EVENT WILL GOOGLE AND/OR ITS LICENSORS BE LIABLE (I) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST DATA, LOST PROFITS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED (INCLUDING BUT NOT LIMITED TO USE, MISUSE, INABILITY TO USE, OR INTERRUPTED USE) AND UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT AND WHETHER OR NOT GOOGLE WAS OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE REGARDLESS OF WHETHER ANY REMEDY SET FORTH IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE; OR (II) FOR ANY CLAIM ALLEGING INJURY RESULTING FROM ERRORS, OMISSIONS, OR OTHER INACCURACIES IN THE PRODUCT OR DESTRUCTIVE PROPERTIES OF THE PRODUCT. IN NO EVENT SHALL GOOGLE'S AND/OR ITS LICENSORS' TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER UNDER THE ORDER FORM GIVING RISE TO SUCH LIABILITY.

9. MISCELLANEOUS. This Agreement is personal to You. You may not assign or otherwise transfer Your rights or delegate Your obligations under this Agreement or any Order Form, in whole or in part, without the prior written consent of Google. Any attempted assignment in derogation hereof shall be null and void. The parties hereto are and shall remain independent contractors, and nothing herein shall be deemed to create an agency, partnership, or joint venture between the parties hereto. Both parties shall be responsible for performing their respective obligations as set forth herein. Upon termination or expiration, the following Sections of this Agreement will survive: 2, 5, 6, 7, 8, 9 and 10. This Agreement shall be governed by and construed in accordance with the U.S. law and the laws of the State of California, to the extent applicable. The parties specifically exclude from application to this Agreement the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and remain enforceable between the parties. The failure of either party to act in the event of a breach of this Agreement by the other shall not be deemed a waiver of such breach or a waiver of future breaches. Any notice given under this Agreement shall be in writing and in the English language and shall be delivered by certified or registered mail, postage prepaid, return receipt requested. Notices shall be deemed given upon acknowledgment of receipt. All notices to Google must be sent to the attention of Google as set forth on the Order Form or to any other address Google specifies in writing, provided that a courtesy copy shall also be sent to the attention of the Google Legal Department for all legal notices. Notices to Customer shall be sent to the address set forth on the Order Form or to any other address You specify in writing. Neither party shall be liable for failing or delaying performance of its obligations (except for the payment of money) resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, earthquake, fire, flood or other acts of God, labor conditions, power failures, and Internet disturbances. You agree that this Agreement shall

be construed as if both parties jointly wrote and prepared it. This Agreement and the Order Form(s), Contract No. _____ and the terms or other provisions located at any Google uniform resource locators (URLs) referenced pursuant to this Agreement (which are all incorporated herein by reference), constitutes a complete, absolute integration and the entire agreement between the parties hereto relating to the subject matters of this Agreement, and supersedes all prior representations, proposals, discussions, and communications, whether oral or in writing, and all contemporaneous oral communications, and any terms contained in any related purchase order(s) or other documents pertaining to the subject matter of this Agreement shall be null and void. This Agreement may be modified only in writing signed by both parties. In the event of a conflict between the terms and conditions of this Agreement and any individual Order Form, the Order Form shall govern. The parties may treat faxed documents as originals; however, this shall not preclude either party from requiring the exchange of original signatures.

10. U.S. GOVERNMENT RESTRICTED RIGHTS. The Product is commercial within the meaning of the applicable civilian and military Federal acquisition regulations and any supplement thereto. If the user of the Product is an agency, department, employee, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Product, including technical data or manuals, is restricted by the terms, conditions and covenants contained in this Agreement. In accordance with Federal Acquisition Regulation 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies, the use of the Software is further restricted by this Agreement.

11. INDEMNIFICATION.

11.1 Subject to this Section 11, Google will defend, or at its option settle, any third party lawsuit or proceeding brought against You by a third party based upon a claim that the Appliance used in accordance with the Documentation and this Agreement infringes any United States patent, copyright, trade secret, or trademark right of a third party ("IP Claim"), provided that You: (a) promptly notify Google in writing of any such IP Claim; (b) give Google sole control and authority to direct the investigation, preparation, defense and settlement of the IP Claim; and (c) assist and fully cooperate in the defense of same. Indemnification shall be provided for any claim covered under this Section 11 and shall be limited to payment of any final award of damages assessed against Customer resulting from such IP Claim, including any awarded costs and attorneys' fees, or any settlement amount agreed to by Google in writing. Google will not be responsible for any settlement it does not approve in writing prior to such settlement.

11.2 Following notice of an IP Claim or any facts which may give rise to such IP Claim, Google may, in its sole discretion and at its option, (a) procure for You the right to continue to use the Appliance, (b) replace the Appliance, or (c) modify the Appliance to avoid the alleged infringement. If Google determines that it is not commercially reasonable to perform any of these alternatives, Google shall have the option to terminate the license for the allegedly infringing Appliance and refund the Appliance Fees actually paid by You through the date an IP claim occurs for such allegedly infringing Appliance, less depreciation for use assuming straight line depreciation over the Term, or twenty-four (24) months, whichever is less.

11.3 In no event will Google have any obligations under this Section 11 or any liability for any claim or action if the IP Claim is caused by, or results from: (a) Your combination or use of the Appliance with software, services, or products developed by You or third parties, if such IP Claim would have been avoided by the non-combined or independent use of the Appliance, (b) modification of the Appliance by anyone other than Google if such IP Claim would have been avoided by use of the unmodified Appliance, (c) Your continued allegedly infringing activity after being notified thereof or after being provided modifications that would have avoided the alleged infringement, (d) Your use of the Appliance in a manner not in accordance with this Agreement or the Documentation, (e) use of other than Google's most current release of the Appliance if the claim or action would have been avoided by use of the most current release or revision. You will defend and indemnify Google, or at your option settle, in the same manner as provided in this Section 11, any claims made against Google for infringement based on any conduct by You described in subsections (a) through (e) of this subsection 11.3.

11.4 THE FOREGOING STATES GOOGLE'S ENTIRE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT.

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